

ST 01-0222-GIL 10/25/2001 CONSTRUCTION CONTRACTORS

Persons who take tangible personal property and permanently affix it to real estate act as construction contractors. Construction contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities, payable to their suppliers, based upon their cost price of items which they purchase for subsequent incorporation into real estate. See 86 Ill. Adm. Code 130.1940. (This is a GIL).

October 25, 2001

Dear Xxxxx:

This letter is in response to your letter that we received on July 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA is in the business of installing fuel storage tanks as part of Real Estate. We bid/quote projects based on the specifications the customer provides us, and in our bid price to the customer we do not include sales tax. We need to be reimbursed by our customers for sales tax that is incurred throughout the project that we pay to the Illinois Department of Revenue. We would like to insert a line in our bids/quotes simply stating: Where applicable, reimbursement for AAA Tax Expense will be billed to purchaser.

We assume this is the proper way to follow tax laws, can you please affirm our understanding in writing, Thank You.

Please be advised persons who take tangible personal property and permanently affix it to real estate act as construction contractors. See the enclosed copy of 86 Ill. Adm. Code 130.1940. Construction contractors incur Use Tax and local Retailers' Occupation Tax reimbursement liabilities, payable to their suppliers, based upon their cost price of items which they purchase for subsequent incorporation into real estate.

Construction contractors should pay tax to their Illinois registered suppliers on building materials they will incorporate into real estate. If such materials are purchased without paying tax, such as from unregistered out-of-State suppliers, the purchasing contractors must self-assess and pay the Use Tax directly to this Department. When billing construction contract jobs, contractors are prohibited from charging their customers a designated "tax" because the construction contractors bear the legal incidence of the tax. The legal incidence does not fall upon the customers because the customers are not buying tangible personal property from contractors when they enter into contracts for improvements to real estate.

When contractors collect "tax" from customers as a separate item on building materials they install, an overcollection of tax situation exists. In these cases, the contractors are required to either refund the overcollected tax to their customers or remit it to the Department. However, contractors and their customers are authorized to enter into private contractual provisions whereby customers agree to pay contractors reimbursement amounts for the tax liability the contractors incurred on their cost price of building materials they incorporate into real estate. In these situations, the reimbursement amounts should be clearly identified as reimbursements for taxes incurred by the contractors, and not represented as taxes due from the customer to the State.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.